IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP NO.10473 of 2004

DATE OF DECISION : 12.10.2006

Ishwar Singh

.....PETITIONER

VERSUS

State of Haryana and others.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE M.M.S.BEDI

PRESENT: Mr. SS Dahiya, Advocate for petitioner.

Mr.Harish Rathee,Sr. DAG, Haryana for respondents 1 and 2.

Mr.RN Lohan,Advocate for respondents 3 to 5.

**M.M.KUMAR,J.**

The prayer made in this writ petition filed under Article 226 of the Constitution is for issuance of a direction to the respondents to release the pay and allowances of the petitioner from 16.11.2002 to 31.8.2003 along with interest @ 18% per annum, which is illegally withheld by respondent No.4.

It is undisputed that the petitioner was dismissed from service vide order dated 30.12.1997. Against the aforementioned order the petitioner has preferred an appeal under Rule 30 read with Rule 28 of the

Staff Service Rules,1975. The appeal was allowed by the Registrar Cooperative Societies vide order dated 15.11.2002 (Annexure P-1) by permitting the respondents to hold de novo inquiry on the question with regard to shortage of articles in store. In pursuance to the directions given by the Registrar, the petitioner was reinstated in service from the date he joined in the Store and he was not to be paid any salary from the date of the dismissal to the date of joining. The case of the petitioner is that he had submitted his joining report on 16.11.2002 but he was not allowed to join the duties for the reasons best known to the respondents. On 12.9.2006 in order to ascertain the factual position, we had requisitioned the original record to find out whether the petitioner had submitted his joining report on 16.11.2002 and passed the following order:-

> " There is positive averment made by the petitioner in para 5 of the writ petition that in pursuance to the orders passed by the Registrar, Cooperative Societies on 15.11.2002, he submitted his joining report on 16.11.2002 and he was not permitted to join by the respondents. In the corresponding para of the reply filed by respondent No.3 to 5, the averments made by he petitioner have not been specifically denied. However, learned counsel for respondents No. 3 to 5 states that he shall produce the record to settle the aforementioned controversy on a point of fact.
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> Let the record be produced on October 12,2006 along with the joining report,if any, available on record."

In pursuance to the aforementioned order, learned counsel for the respondent no.4 has produced the original record, which

shows that in fact on 16.11.2002 the petitioner has submitted the joining report, which was kept pending till the copy of the order was received. It is also undisputed that the petitioner was actually permitted to join on 01.09.2003.

Having heard learned counsel for the parties at considerable length, we find that the prayer made by the petitioner deserves to be accepted as the petitioner has submitted his joining report on 16.11.2002 and for no fault of his he was not allocated any work till 31.8.2003. It is the admitted position that the petitioner is now working from 1.9.2003 and is accordingly paid his salary. However, his salary from 16.11.2002 to 31.8.2003 has not been paid. It is well settled that once an employee submits his joining report then he is deemed to be in service and consequently he would also be entitled to the salary from the date he submits his joining report. Accordingly, the writ petition is allowed and respondent No.4 is directed to release the arrears of salary from 16.11.2002 to 31.8.2003.

The argument of the learned counsel for respondent No.4 that there is an Award (Annexure R-3/1) passed by the Arbitrator-cum-Deputy Registrar, Cooperative Societies against the petitioner for an amount of Rs.99,737.22 P. cannot be set off from the salary payable to the petitioner for various reasons. Firstly, an amount of Rs.1,54,737.22 P. has also been subject matter of appeal before the Registrar, Cooperative Societies when he allowed the appeal filed by the petitioner on 15.11.2002. It is not possible for us to adjudicate on that aspect and to record a finding that the Award has attained finality and the order dated 15.11.2002 (Annexure P-1) passed by the Registrar, Cooperative Societies has no effect on the Award. Therefore,

we leave it open for respondent No.4 to proceed in accordance with law, if any recovery in pursuance to the Award (Annexure R-3/1) is to be made from the petitioner. The petitioner shall be released the salary with effect from 16.11.2002 to 31.8.2003. The needful shall be done within a period of one month from the date a certified copy of this order is produced before respondent No.4. No costs.

( M.M.KUMAR )
JUDGE

October 12 ,2006
TSM

( M.M.S.BEDI )
JUDGE